

Chicago Public Schools Policy Manual

Title: COMPREHENSIVE NON-DISCRIMINATION TITLE IX AND SEXUAL HARASSMENT

Section: 102.8

Board Report: 16-0525-PO1

Date Adopted: May 25, 2016

Policy:

THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Board amend Board Report 12-0425-PO1 Comprehensive Non-Discrimination, Title IX and Sexual Harassment Policy.

PURPOSE: The Board recognizes that the goal of eliminating all forms of discrimination, sexual harassment and retaliation in the workplace and attendance centers, as these terms are defined in Section III of this policy, will create a better work and learning environment for Board employees and students. This policy establishes procedures for the reporting, investigation and resolution of complaints of sexual harassment, discrimination and retaliation occurring in the Chicago Public Schools (CPS) as well as any of its administrative offices. This policy also establishes procedures to investigate claims of discrimination based on gender pursuant to Title IX of the Education Amendments of 1972. Requests for accommodations for disabilities are not covered under this policy, rather are handled under the Board's Americans with Disabilities Act and 504 Policy.

POLICY TEXT:

I. REPORTING

Individuals may make an oral or written complaint of discrimination, sexual harassment, or retaliation if they:

- believe they are the subject of discrimination, sexual harassment, or retaliation;
- have knowledge of discriminatory or sexual harassment conduct, or retaliation; or
- believe that they have been retaliated against for making a good faith complaint or report of sexual harassment, discrimination, or for participating or aiding in an investigation of such complaints.

To report suspected acts of sexual harassment, discrimination or retaliation or to request general information regarding this policy, contact the Equal Opportunity Compliance Office Administrator (EOCO Administrator) at 42 W. Madison, Suite 900, Chicago, Illinois 60602, (773) 553-1013, or one of the individuals listed in Section IV herein. To request general information regarding this policy, contact the EOCO Administrator at 42 W. Madison, Suite 900, Chicago, Illinois 60602, (773) 553-1013. Specific reporting procedures are found in Section IV herein. The EOCO Administrator or EOCO Investigator shall investigate allegations of sexual harassment, allegations of discrimination and allegations of retaliation as later described in this policy.

II. GENERAL PROVISIONS

A. Work and Learning Environment: It is the policy of the Board of Education of the City of Chicago, ("Board") to maintain a work and learning environment in which all individuals are treated with dignity and respect. Each employee and student shall enjoy the right to work and learn in an environment that is free of discrimination, sexual harassment or retaliation. No person shall be required to endure discrimination, sexual harassment or retaliation as a condition of employment or in pursuit of academic endeavors. Discrimination, sexual harassment and retaliation, as these terms are defined in Section III of this policy, will not be tolerated regardless of whether it takes place in the Board's administrative offices, its attendance centers, during work-related assignments outside of administrative offices or attendance centers, during school-related/work-related extracurricular functions or during work-related social functions.

B. Covered Individuals: No employee, student, contractor, consultant, vendor, or volunteer (collectively referred to as "covered individuals") shall engage in any conduct that discriminates, sexually harasses or retaliates, as these terms are defined in Section III of this policy, against another while employed, working for, attending school or participating in district functions.

C. Scope: This policy covers all phases of employment, and academic status, including, but not limited to recruitment, hiring, evaluations, upgrading, rates of pay, the selection for training, promotions, demotions, transfers, layoffs, employment non-renewals, termination, benefits, discipline, educational testing, and expulsions. This policy also covers allegations by persons seeking or receiving Board services as described herein.

D. Limitations: Nothing in this policy is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this policy shall be construed to create contractual or other rights or expectations. Nothing herein is intended to affect the right of any person to file a charge or complaint of discrimination, retaliation or sexual harassment with any agency with jurisdiction over such charge or complaint.

III. CONDUCT PROHIBITED

A. Discrimination:

1. *Definition* - As used in this policy, discrimination means intentional discriminatory or harassing treatment on the basis of any classifications protected by the Constitution of the United States, the Constitution of the State of Illinois and applicable federal, state or local laws or ordinances, including but not limited to discrimination on the basis of race, color, sex, gender identity/expression, age, religion, disability, national origin or sexual orientation. Pregnancy discrimination is a form of sex discrimination prohibited by law, including the Pregnancy Discrimination Act.

2. *Conduct Prohibited* – Discrimination is prohibited when making employment-related decisions, including but not limited to recruitment, hiring, evaluations, upgrading, rates of pay, the selection for training, promotions, demotions, transfers, layoffs, employment non-renewals, termination, benefits and discipline. Education-related programs and activities, including but not limited to admissions, financial aid, academic programs and extracurricular activities, will be administered without regard to the student's or applicant's race, color, national origin, sex, gender identity/expression, sexual orientation, age, religion or disability. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, but not involving conduct of a sexual nature, may constitute a form of sex discrimination. Such acts, if based on other legally protected categories such as race, religion, and national origin, may constitute a form of harassment. The discrimination described above in paragraph 1 may in some circumstances be prohibited in the maintenance of facially neutral policies, practices, or requirements that have a disproportionate and negative effect on employment or academic opportunities of the protected classifications identified in paragraph 1.

3. *Reporting* - The procedures for reporting claims of discrimination, harassment or retaliation are set out in Section IV of this policy.

B. Sexual Harassment:

1. *Definition* - As used in this policy, sexual harassment means any un-welcomed sexual advance or request for sexual favors or conduct of a sexual nature, including offensive remarks about a covered individual's sex:

(i) when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in an education program or activity or receipt of Board services;

(ii) when submission to or rejection of such conduct by an individual is used as the basis of any employment, educational or service decision affecting the individual; or

(iii) when such conduct has the purpose or effect of substantially interfering with the work performance of an employee, a student's ability to participate in or benefit from an education program or activity or creating an intimidating, hostile or offensive work or learning environment.

2. *Conduct Prohibited* - Covered individuals shall not sexually harass another while employed, working for, attending or participating in district endeavors. There is a broad range of conduct which can, in certain circumstances, be considered a violation of this policy. This may include, but is not limited to sexually suggestive or offensive remarks; sexually suggestive pictures; sexually suggestive gesturing; verbal harassment or abuse of a sexual nature; harassing, abusive or sexually suggestive or offensive messages sent by e-mail or other electronic medium; subtle or direct propositions for sexual favors, and touching, patting, or pinching. Sexual harassment may be directed against a particular person or persons,

or a group, whether of the opposite sex or the same sex. The Complainant need not be the person directly harassed.

3. *Reporting* - The procedures for reporting claims of sexual harassment are set out in Section IV of this policy.

C. Non-Fraternization: No employee shall engage in or maintain a romantic relationship with another employee that they manage, supervise or may control or influence the supervision, evaluation or compensation of the other. Employees who become involved in such a relationship must communicate this fact to their principal or department head. The principal or department head will confer with the EOCO Administrator to evaluate and determine an appropriate resolution in compliance with this policy. One or both employees may have to seek other employment, as the Board is under no obligation to reassign one or both employees. Romantic relationships between Board employees where there is no supervisory affiliation are not prohibited by this policy. Conflicts of interest involving a Board employee and their spouse, domestic partner or relative(s) are addressed in the Board's Ethics Policy.

D. Conduct with Students: Romantic or sexual conduct between school employees, contractors, consultants, vendors or volunteers and Chicago Public School students is strictly prohibited. For purposes of this policy, such conduct includes but is not limited to, physical contact of a sexual nature or use of sexually suggestive, offensive or inappropriate remarks. Any person with knowledge of an improper relationship between a student and a school employee, contractor, consultant, vendor or volunteer must immediately report the conduct to the Law Department. In such instances, employees shall also complete the mandatory reporting requirements identified for suspected child abuse/neglect by school personnel set out in the Board's Policy on Reporting Child Abuse and Neglect.

E. Retaliation: Retaliation against any person for having made a complaint or report of discrimination or sexual harassment, whether made internally, or externally with a federal, state, or local agency; or participating or aiding in an investigation of discrimination or sexual harassment, whether internal, or external with a federal, state, or local agency, is strictly prohibited. Any person who believes that he or she has been subjected to retaliation should report the retaliatory conduct to the EOCO Administrator. Acts of retaliation shall subject the offending employee to discipline up to and including dismissal.

IV. REPORTING PROCEDURES

A. Timely Reporting: Complaints of discrimination, sexual harassment, retaliation or other violations of this policy shall be made within 90 calendar days of the discrimination, sexual harassment or retaliation complained of. The 90 calendar day reporting requirement shall be strictly applied, except when the EOCO Administrator determines, in his/her discretion that extraordinary circumstances exist and authorizes a waiver of the 90 day reporting requirement.

Nothing in this policy prevents anyone from reporting an instance of discrimination, sexual harassment, retaliation or non-compliance with this policy of which they have witnessed or have knowledge.

B. Complaints by Students:

1. *General* - A student, or a parent/guardian on the student's behalf, may make a complaint of discrimination, sexual harassment or retaliation to the school principal, assistant principal or EOCO Administrator. If the student alleges that an employee, contractor or vendor has discriminated against, retaliated against or sexually harassed him or her, the EOCO Administrator, school principal or assistant principal shall refer the matter to Law Department for investigation. If a student, or a parent/guardian on behalf of a student complains to the school principal or assistant principal, that another student has discriminated against, retaliated against or sexually harassed him or her, the school principal or assistant principal shall investigate the matter and, if the complaint is substantiated, commence appropriate disciplinary action against the offending student in accordance with the Student Code of Conduct.

If a student, or their parent/guardian on the student's behalf, complains to the EOCO that another student has discriminated against, retaliated against or sexually harassed him or her, the EOCO shall investigate the matter. If the EOCO substantiates the complaint, the EOCO Administrator will submit an investigation report to the Law Department for referral to the offending student's principal who will consult with the Law Department about appropriate disciplinary action.

If a student, parent or guardian making the complaint to the school principal or assistant principal feels the intervention or consequence rendered by the school principal or assistant principal is insufficient to address the discrimination, sexual harassment or retaliation, he or she may appeal the matter within 15 calendar days to the EOCO Administrator. The EOCO Administrator shall render a final determination in accordance with the timeline and procedures set out in the Guidelines to this policy. If the EOCO determines the intervention or consequence rendered at the school level is insufficient, the EOCO Administrator will submit an investigation report to the Law Department.

The EOCO Administrator shall also ensure that the affected students are afforded their rights provided for under Title IX of the Education Amendments of 1972.

2. *Disability Discrimination Complaints By Students* - Notwithstanding the procedures cited above, a student, or a parent/guardian on the student's behalf, making a complaint of disability discrimination by another student or by an employee, contractor or vendor, shall report their complaint in accordance with the Board's Combined Americans With Disabilities Act and 504 Policy (the "504 Policy")(See Section IV.C.1.). Under the 504 Policy, student complaints of disability discrimination should be submitted to: a) the principal or 504/ADA Coordinator of the student's assigned school or the school conducting the program or activity being complained about; or b) the central office department head of the applicable office conducting the program or activity being complained about; or c) the Office of Diverse Learner, Supports and Services, Department of Procedural Safeguards and Parental Supports. Principals, 504/ADA Coordinators and department heads must send all written complaints of this nature to the Department of Procedural Safeguards and Parental Supports within 3 days of receiving the complaint.

No complaint based on disability status may be denied on the basis of being submitted to the incorrect District office. In such a case, the recipient must promptly refer the action to the Department of Procedural Safeguards and Parental Supports, and any submission deadlines will be extended to compensate for time lost due to the error in submission.

C. Complaints by Employees, Contractors, Consultants, Vendors and Volunteers: For employees, contractors, consultants, vendors and volunteers complaints of discrimination, sexual harassment or retaliation shall be made to any of the following persons:

1. The Principal, administrator in charge or the assistant principal of the school in which the Complainant works;
2. The department head of the Complainant's office, including network chief if the Complainant is a Principal, or the department head of the hiring department if the Complainant is a consultant/vendor/contractor; or
3. The EOCO Administrator or EOCO Investigator.

Any school principal, administrator in charge, assistant principal or department head receiving an oral or written complaint alleging discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer shall handle the complaint in accordance with Sections IV. E. and F. below.

D. Complaints by Members of the Public: Any member of the public who is aware of a violation of this policy or believes that he or she has been subjected to discrimination, sexual harassment or retaliation by a Board employee, contractor, consultant, vendor or volunteer may submit a complaint to any of the following persons:

1. The Principal, administrator in charge or the assistant principal of the applicable school;
2. The department head of the applicable office; or
3. The EOCO Administrator or EOCO Investigator.

Any school principal, administrator in charge, assistant principal or department head receiving an oral or written complaint alleging discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer shall handle the complaint in accordance with Sections IV. E. and F. below.

E. Supervisor Handling, Confirmation and Reporting: Any school principal, administrator in charge, assistant principal or department head, including network chiefs, receiving an oral or written complaint alleging discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer must refer it to the EOCO for handling within three (3) business days

following receipt or knowledge of the allegations. If the allegation from the Complainant is in writing, that document must be submitted to the EOCO. If the complaint is oral, the party receiving the complaint must summarize the allegation in writing and submit it to the EOCO. The principal, administrator in charge, assistant principal or department head, including network chiefs, must submit the written allegation to the EOCO in a manner that ensures the integrity and confidentiality of the contents. For example, if the principal, administrator in charge, assistant principal or department head, including network chiefs, elects to send the allegations/summary via facsimile, email or U.S. Mail, they should mark the findings, "Confidential," and send the allegations/summary to the EOCO and not to the parties involved, or any other third parties. The supervisor shall not disclose the allegations/summary to either party, or to any third party unless required by law. Unless required by law, the supervisor sending the allegations to the EOCO should only disclose this information as requested by the EOCO during the investigation. Upon receipt of the written allegations the EOCO will contact the Complainant to open a formal complaint.

F. School/Department's Involvement: No school-based or department-based investigation or discipline may be initiated or imposed regarding allegations of discrimination, sexual harassment or retaliation by an employee, contractor, consultant, vendor, volunteer until the EOCO Administrator or the Law Department has investigated the matter and made a determination. If the EOCO Administrator unsubstantiates a claim, nothing in this policy prevents:

1. the supervisor from disciplining an employee for an act(s) of misconduct under the relevant District discipline policy, guideline and/or collective bargaining agreement, referenced in Section VI B herein, other than for those acts covering discrimination, harassment or retaliation; or
2. the principal from relinquishing a volunteer's authorization to serve; or
3. the Board from subjecting a contractor, consultant or vendor to remedies of law or remedies pursuant to their contract.

V. EOCO RESPONSES TO COMPLAINTS

A. Information and Advice: Covered individuals and members of the public may contact the EOCO to seek advice, information or counseling on matters related to discrimination, sexual harassment and retaliation, and options available under this policy.

B. Complaint:

1. *Signed Complaint* - When the EOCO Administrator or EOCO Investigator receives a complaint, either directly from the Complainant or indirectly from the individuals authorized in Section IV to receive complaints, the EOCO Administrator or EOCO Investigator, will request that the Complainant sign a complaint. All complaints of discrimination, sexual harassment or retaliation, even if unsigned or oral, will be promptly and fully investigated.

2. *Unsigned Complaint or No Complainant* - The EOCO Administrator will take appropriate actions regarding allegations of discrimination, sexual harassment, retaliation or other violations of this policy even if there is no signed complaint. The EOCO Administrator may investigate allegations of discrimination, sexual harassment, retaliation or other violations of this policy even if a Complainant chooses not to pursue the matter. The EOCO Administrator may initiate investigations where there is no complaint.

3. *Investigation* - After receipt of a complaint, the EOCO Administrator or EOCO Investigator will commence an investigation within fifteen calendar days. During the initial conversation with the Complainant, the EOCO Administrator or EOCO Investigator will inform the Complainant that if the complaint is sustained and the Board seeks to discipline the alleged offender, the Complainant may be called to testify at subsequent disciplinary or other court proceedings. The EOCO Administrator or EOCO Investigator will attempt to interview the Complainant and obtain from the Complainant the identity of witnesses and any other evidence the Complainant chooses to submit in support of their allegations. The EOCO Administrator or EOCO Investigator will attempt to interview relevant witnesses and review relevant documents. The investigation generally will conclude in no later than five school months unless either the Complainant or the alleged offender(s) are on a leave of absence at any point during the investigation. During the investigation, where appropriate the EOCO will take interim steps such as reducing, and in some cases, eliminating the potential for direct contact between the Complainant and alleged offender. At the conclusion of the investigation, the EOCO Administrator will prepare and issue a summary report containing a synopsis of the evidence and findings. Both the Complainant and the alleged offender will receive notification of the investigation outcome and determination. The EOCO

maintains a record keeping system for all complaints, investigations, findings and action(s) taken. The EOCO will ensure employees and students are afforded their rights provided for under Title IX of the Education Amendments of 1972.

4. *Disciplinary Determination* - In cases where the EOCO substantiates the allegations, the EOCO Administrator will submit an investigation report to the Law Department for referral to the offender's supervisor who will consult with the Law Department about appropriate disciplinary action.

5. *Amended and Additional Complaints* - Nothing herein prevents a Complainant from amending a complaint to include new allegations, or from submitting multiple complaints on unrelated incidents.

VI. VIOLATIONS AND DISCIPLINE

A. Violations: It is a violation of this policy for:

1. Any covered individuals to engage in discrimination, sexual harassment or retaliation, as defined in Section III herein;
2. Any principal, administrator in charge, assistant principal or department head, including network chiefs, to fail to abide by the reporting and other obligations identified in this policy;
3. Any principal, administrator in charge, assistant principal or department head, including network chiefs, to intentionally ignore sexually harassing conduct, discriminatory conduct or retaliation, as defined in Section III herein, by a covered individual that occurs in their presence, by failing to report that conduct. Discipline may be imposed in instances where a principal, administrator in charge, assistant principal or department head, including network chiefs, ignores such conduct even when the alleged victim does not complain about the observed conduct;
4. Any principal, administrator in charge, assistant principal, department head, including network chiefs or EOCO employee to fail to fulfill their duties and responsibilities as described in this policy;
5. Any Board employee to intentionally ignore sexually harassing conduct or discriminatory conduct, as defined in Section III herein, by a Board employee, contractor, consultant, vendor or volunteer towards a student that occurs in their presence, by failing to report that conduct. Discipline may be imposed in this instance regardless of whether or not the student complains about the conduct; and
6. Any covered individual to bring allegations in bad faith, and which the EOCO Administrator or EOCO Investigator finds to be false.

B. Discipline:

1. Employees who violate this policy are subject to disciplinary action in accordance with the discipline requirements and procedures contained in one of the four documents listed below, which documents may be amended from time to time. The following four documents identify discipline requirements and procedures based on an employee's position classification:
 - a. Employee Discipline and Due Process Policy for Union Employees (except CTU);
 - b. Chicago Teachers Union Contract;
 - c. Non-Union Employee Discipline Guidelines; or
 - d. Principal and Assistant Principal Employment Guidelines.
2. Students who violate this policy are subject to disciplinary action pursuant to the Student Code of Conduct.
3. Contractors, consultants or vendors who violate this policy are subject to remedies of law or remedies pursuant to their contract.
4. Volunteers who violate this policy are subject to the relinquishment of their authorization to serve as a volunteer.

VII. NOTICE

Upon adoption of this policy, all new employees shall receive information on this policy at the date of hire. Each school shall maintain copies of this policy in its Main Office and annually the Principal shall advise each employee (full or part-time), student, contractor, consultant and volunteer who attends/works for/provides services to their school about this policy. Network Chiefs and Department Heads shall maintain a copy of this policy in their offices and annually shall advise each employee or

consultant/contractor they supervise about this policy. A poster informing covered individuals regarding prohibited discrimination, sexual harassment and retaliation will be posted in a prominent location at all schools, Network offices and in each Central Office department site. This policy will be distributed to all Board members, employees, and vendors active as of the date this policy is adopted, and posted on the Board of Education's website.

VIII. PUBLICATIONS

Beginning September 1, 2016, the following statement will be used in any and all new publications directed to students, parents, employees or applicants: "It is the policy of the Board to prohibit discrimination on the basis of any classifications protected by the Constitution of the United States, the Constitution of the State of Illinois and applicable federal, state or local laws or ordinances, including but not limited to discrimination on the basis of race, color, sex, gender identity/expression, age, religion, disability, national origin or sexual orientation."

The following paragraph will also be included in publications directed to parents and students: "Inquiries concerning the application of Title IX of the Education Amendments of 1972 and related regulations concerning sex discrimination should be referred to the CPS Equal Opportunity Compliance Office."

For purposes of this section, publication refers to handbooks, catalogs, manuals, applications and other similar published materials.

IX. EDUCATION, TRAINING AND PREVENTION

The EOCO will conduct training or arrange for training to be provided on this policy and related legal developments on an as needed basis.

Amends/Rescinds:	Amends 12-0425-PO1
Cross References:	09-1216-PO1, 08-0123-PO4, 03-0326-PO02, 97-1119-PO2, 86-1008-PE17, 86-1008-PE18 and 81-51-1
Legal References:	20 U.S.C. §1681 et seq.; 29 U.S.C. §764; 42 U.S.C. §1981; 42 U.S.C. §2000e et seq, Title VII of the Civil Rights Act; 42 U.S.C. §12101; 775 ILCS 5/7A-102.